

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WEYAUWEGA/FREMONT SUPPORT
PERSONNEL ASSOCIATION
Involving Certain Employees of
SCHOOL DISTRICT OF WEYAUWEGA-
FREMONT

Case X
No. 32007 ME-2259
Decision No. 21285

Appearances:

Mr. William B. Stark, Consultant, c/o of Stark and Associates, Inc., P.O. Box 1227, Hendersonville, Tennessee 37075, appearing on behalf of the Weyauwega-Fremont Support Personnel Association. 1/
Melli, Shiels, Walker & Pease, S.C., by Mr. Jack D. Walker, 119 Monona Avenue, P.O. Box 1664, Madison, Wisconsin 53701, appearing on behalf of School District of Weyauwega-Fremont.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DISMISSING PETITION FOR ELECTION

Weyauwega-Fremont Support Personnel Association having filed on August 2, 1983 a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election, pursuant to the Municipal Employment Relations Act, among certain employees employed by the Weyauwega-Fremont School District to determine whether those employees desire to be represented for the purpose of collective bargaining by the Weyauwega-Fremont Support Personnel Association; and hearing in the matter having been conducted at Weyauwega, Wisconsin on September 9, 1983 before Carol L. Rubin, an examiner on the staff of the Wisconsin Employment Relations Commission; and a stenographic transcript having been made of this hearing; and the parties having exchanged post-hearing briefs by November 2, 1983; and the Commission, having reviewed the evidence and the arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the Weyauwega-Fremont Support Personnel Association, hereinafter referred to as the Petitioner or the Association, is a labor organization having its offices located at Route 1, Box 184, Weyauwega, Wisconsin 54983.
2. That the School District of Weyauwega-Fremont, hereinafter referred to as the District, has its offices at 310 East Main Street, Weyauwega, Wisconsin 54983; that the District operates a school system, wherein it provides educational services to primary and secondary students in four schools, namely, the Weyauwega Elementary School, the Fremont Elementary School, Weyauwega Middle School, and the Weyauwega-Fremont High School.
3. That the Association seeks an election in a collective bargaining unit consisting of all building maintenance and janitorial staff 2/, hereinafter

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- 1/ At hearing Mr. Stark stated that his address was Route 2, Box 79B, Weyauwega, Wisconsin. On November 29, 1983, the Commission was informed of his change of address.
 - 2/ At the hearing the bargaining unit description on the petition was amended to clarify that the Petitioner was seeking a unit of building maintenance and janitorial staff only, to the exclusion of any other non-certified employees.

referred to as janitors; that the District, on the other hand, has contended that the appropriate bargaining unit should consist of all non-professional employees of the District, excluding confidential, supervisory and managerial employees; and the Association does not wish the Commission to direct an election if the Commission's direction of election would include, as eligible voters, any employees other than the District's maintenance and janitorial staff.

4. That the District employs forty-four non-supervisory, non-certified staff consisting of the following categories and numbers of employees: six employees functioning as maintenance and janitorial staff, sixteen bus drivers, seven secretaries, one bookkeeper, three playground supervisors, four aides, three cook-servers and four servers; that the District also employs a Head Cook in the Kitchen Department, Winnie Vercauteren, and a supervisor for the Transportation Department, Duane Dobbert; that the only employees considered to be full-time employees include five janitors, four of the secretaries and one bus driver/mechanic's helper; that, at present, none of these employees are represented for collective bargaining purposes.

5. That the janitors, like the other non-certified employees, perform their duties at one of the District's four teaching facilities; that the janitors are generally present during the school day, as are other non-certified employees, although the janitors' hours do extend to some extent both before and after classes; that both janitors and secretaries are supervised by their respective Building Principals and to some extent by the District Administrator, while aides are supervised by the Building Principals; that food servers assigned to the middle and elementary schools are also supervised by the Building Principals, while cooks and servers at the High School are supervised by the Head Cook; that the bus drivers are separately supervised by the Transportation Supervisor; that the District Administrator exercises some degree of supervisory authority over all support employees except the bus drivers; that five of the six janitors work full-time twelve months out of the year, as do four of the secretaries and one bus driver/mechanic's helper; that all full-time non-instructional staff receive the same benefits, which include funeral days, one emergency day, twelve sick days and partial payment of health insurance premiums; that all part-time non-instructional staff receive lesser benefits which include funeral days and one emergency day, but only ten sick days and no contribution toward health insurance; that there is interchange between the janitors and the other support personnel because of their proximity of work location and because of the janitor's daily involvement in the hot lunch program.

6. That the District has a history of meeting with individual groups of non-certified employees to discuss wages, hours and conditions of employment; that either the District Administrator or the District's Negotiating Committee has met annually with the group of janitors for at least the last five years, and has requested from them their proposals regarding wages, hours and conditions of employment; that after such discussions, the District has unilaterally implemented certain of its own counterproposals regarding wages, hours and conditions of employment.

7. That the maintenance and janitorial staff does not share a community of interest so unique as to warrant a separate bargaining unit; and that a bargaining unit composed exclusively of maintenance and janitorial staff would result in undue fragmentation of the District's support staff employees.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That the Weyauwega-Fremont Support Personnel Association is a labor organization within the meaning of Sec. 111.70 (1)(j), of the Municipal Employment Relations Act.

2. That a collective bargaining unit comprised solely of maintenance and janitorial staff is not an appropriate collective bargaining unit for purposes of collective bargaining within the meaning of Sec. 111.70(1)(e) and (4)(d)2.a. of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and orders the following

ORDER 3/

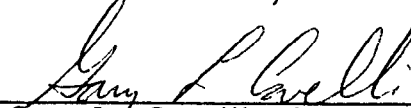
That the petition for an election filed by the Weyauwega/Fremont Support Personnel Association be, and the same hereby is, dismissed.

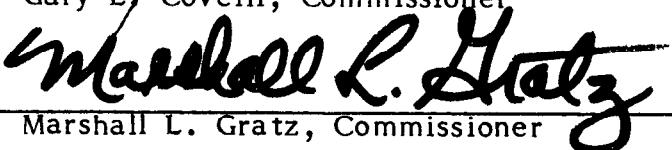
Given under our hands and seal at the City of
Madison, Wisconsin this 30th day of December, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

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- 3/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order (Footnote continued on Page Four)

finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER DISMISSING PETITION

POSITION OF THE PARTIES

The Association contends that a bargaining unit of six building maintenance and janitorial employees would constitute an appropriate unit. 4/ The Association asserts that these employees share a distinct community of interests based on their common job duties, wages and conditions of employment. The Association also argues that the janitors have consistently been treated as a separate group by the District as evidenced by a past history of separate negotiations with them over wages, hours and working conditions. The Association stresses that the District should not be able to rely on the anti-fragmentation policy since the District itself has consistently chosen in past years to negotiate and deal with each occupational group as a separate entity, and did so this year as well, until the janitorial group sought to use an outside negotiator.

The District initially raises several procedural issues and seeks to have the petition dismissed because of them. It contends that the Petitioner is not a labor organization, but an individual. The District also argues that the Petitioner does not actually seek to be designated the exclusive bargaining representative of the employees in question, but rather is requesting something other than the statutory certification which the Wisconsin Employment Relations Commission is authorized to order.

The District also asserts that a bargaining unit consisting only of janitorial staff would violate the statutory proscription against undue fragmentation of bargaining units. The District contends that the janitors and other non-certified personnel share common supervision, common worksites, common fringe benefits and similar hours; moreover, there is frequent contact between employees and even sharing of duties. Finally, the District argues that, despite past meetings with individual groups, the District was not engaged in negotiations, expressly disavowed such an intent, and unilaterally set wages, hours and conditions of employment.

DISCUSSION

After examining the record, the Commission is satisfied that the petition is a valid one, and denies the District's motions to dismiss because of procedural irregularities. Though the petition designated Mr. Stark as Petitioner, the testimony of Paul Buchholz, one of the janitors, establishes that Mr. Stark filed the petition on behalf of the Weyauwega/Fremont Support Personnel Association. (T. 67-68, 73-77) His testimony also established that that group meets the statutory definition of a "labor organization" found in Sec. 111.70(1)(j):

. . . any employee organization in which the employees participate and which exists for the purpose in whole or in part of engaging in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours or conditions of employment. 5/

Similarly, the Commission is satisfied that, despite some confusion in terminology, the Association is seeking to act as exclusive bargaining

4/ Although the Association originally requested that only the five full-time employees performing maintenance and janitorial services be included, it stipulated at the hearing that one other employee, Russell Keeney, performed janitorial duties, and did not contest his possible inclusion in the requested unit. During the school year, Keeney is a part-time janitor, while during summer months Keeney is employed full-time performing grounds maintenance duties, rather than building maintenance or janitorial duties.

5/ See City of Cudahy, 19507 (3/82); Brown County, 19891 (9/82).

representative for all maintenance and janitorial staff employed by the District. The fact that the organization has chosen to hire Mr. Stark as chief negotiator this year, but may do otherwise next year (T. 75), does not detract from the Association's fundamental purpose which is to bargain wages, hours and working conditions for the requested bargaining unit as a whole (T. 71-75). Furthermore, Mr. Buchholz satisfactorily explained the statement on the face of the petition that "persons contracting for services do not wish to have a union" by testifying that their desire was for a local and independent bargaining unit that had no affiliation with any national or international union or federation (T. 76). 6/ We conclude that the petition was filed by a labor organization for the purpose of determining whether a majority of the employees in the alleged bargaining unit desire to be represented by an exclusive bargaining representative.

In determining the appropriateness of the unit sought by the Association, the Commission's decision is guided by Sec. 111.70(4)(d)2.a. of MERA, which provides:

The Commission shall determine the appropriate unit for the purposes of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such determination, the Commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit.

In exercising the above-noted statutory authority, the Commission has determined appropriate unit questions on a case-by-case basis 7/ and has given consideration to the following factors:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with all other employees.
5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. 8/

It is evident from the record that the maintenance and janitorial staff possess different skills and usually perform different duties than the other non-certified employees of the District. For instance, in addition to general cleaning, waxing, sanding and painting, the staff does routine maintenance and repair of the boilers, plumbing, playground equipment, etc., though independent contractors are called in for any major job. However, it is also a fact that a unit of only maintenance and janitorial staff would constitute a very small unit of six employees in a school district having only forty-four non-supervisory, non-certified employees. Therefore, it must be determined if the janitors possess interests so unique as to overcome the anti-fragmentation mandate.

6/ Mr. Stark, though not under oath, offered a similar explanation (T. 90-91).

7/ See Appleton Area School District, 18203 (11/80).

8/ Boyceville Community School District, 20598 (4/83); Milwaukee County, 19753-A (2/83).

The record establishes that in many respects there is a community of interest shared by all non-certified employees of the District. The janitors do not share a single common worksite, but like the other support employees, perform their duties at one of the District's four teaching facilities. They are generally present during the school day, as are other employees, although their hours do extend to some extent beyond the student day. There is also considerable overlap in supervision. Both janitors and secretaries are supervised by their respective Building Principals and by the District Administrator, while aides are supervised primarily by the Building Principals. Food Servers assigned to the middle and elementary schools are also supervised by the Building Principals, while cooks and servers at the high school are supervised by the Head Cook. The bus drivers are separately supervised by the Transportation Supervisor. The District Administrator appears to exercise some degree of supervisory authority over all support employees except the bus drivers.

Of considerable importance is the District's policy on fringe benefits. All full-time non-instructional staff receive the same benefits which include twelve sick days and partial payment of health insurance premiums; this group includes five out of the six janitors, four of the seven clericals, and a mechanic's helper in the bus garage. All other non-supervisory employees are classified as part-time employees and receive lesser benefits.

Wages vary between occupational groups and individuals in the groups. The wages for janitors range from \$4.00 to \$5.88 an hour, with no two janitors receiving the same wage, while wages for other employees range from \$3.92 to \$6.60 per hour.

Another factor which increases the community of interest shared by the janitors and other non-certified employees is the daily involvement of the janitors in the hot lunch program. For one to two hours each day, the janitor in each building helps in transporting food from the high school kitchen to the other schools, setting up tables for lunch service, and cleaning up the food service area. In this process, they come into daily contact with cooks, servers, and at least one bus driver.

To counter these many factors which indicate a shared community of interest, the Association relies heavily on the bargaining history between the District and the janitors which allegedly demonstrates that the District engaged in a practice of negotiations on a group by group basis. It is clear from the record that the District, through its Negotiating Committee or the District Administrator, did at times meet separately with various employee groups to discuss wages and other conditions of employment, and did solicit alternative proposals from at least the group of janitors. Various documents show that the District labelled such meetings "negotiations." However, the record also shows that as early as 1979, the District expressly disclaimed to non-certified employees, in writing and orally, any intent to "negotiate," as opposed to just allowing employees to express their concerns. 9/ Moreover, the Commission notes that there was no evidence that a master agreement covering the janitors ever resulted from the "negotiation" process. 10/ The fact that the fringe benefit policy for full-time janitors is identical to that of all other full-time non-certified employees suggests that the District treated all non-certified employees as one group in establishing fringe benefits. Therefore, we conclude that the District unilaterally implemented several terms of employment and that there is not a bargaining history sufficient to overcome the community of interests shared by all non-certified employees or the anti-fragmentation mandate.

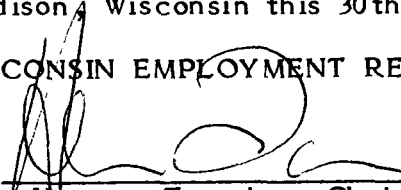
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- 9/ District Exhibit 2 contains the exact statement by the chairman of the District's Negotiating Committee read to gathered support employees, including Paul Buchholz, the chief witness for the Association. It includes the following: "We would like to advise you that this will not set a precedent for any future negotiations. Although we have agreed to this meeting it should be understood that we are not here today to negotiate, but to listen to any concerns you may have."
- 10/ District Exhibit 3 and supporting testimony demonstrate that the employees were issued individual contracts, which made no reference to a master agreement.

The Association amended its petition so as to seek to represent only the building maintenance and janitorial staff. Because such a unit has been found inappropriate, the Commission has ordered the instant petition to be dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 30th day of December, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

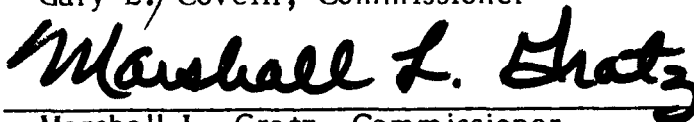
By



Herman Torosian, Chairman



Gary L. Covelli, Commissioner



Marshall L. Gratz, Commissioner